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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 401

WILLIE MELMOTH BOMAR,
Petitioner,

vs.

ROWENA KEITH KEYES AND THE CITY OF NEW YORK

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

WILLIE MELMOTH BOMAR,
Petitioner, pro se.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 401

WILLIE MELMOTH BOMAR,

Petitioner,

vs.

ROWENA KEITH KEYES AND THE CITY OF NEW YORK

PETITION FOR WRIT OF CERTIORARI

To the Honorables, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Willie Melmoth Bomar, respectfully submits her petition for a writ of certiorari to review the findings of the United States Circuit Court of Appeals for the Second Circuit in the above entitled case.

The United States Circuit Court of Appeals for the Second Circuit has rendered an opinion in which the status of the City of New York as a defendant in the above entitled case has not been made clear.

Statement of Case

According to the certified copy of the Record on Appeal from the District Court of the United States for the South-

ern District of New York to the United States Circuit Court of Appeals for the Second Circuit now on file in the office of the Clerk of the Supreme Court of the United States, appellant was a probationary teacher in the Girls' High School, Brooklyn, New York, during the academic year of 1938-1939; and for the entire school year was assigned a heavier teaching load than any other teacher in that school and performed her arduous and excessive assignments in a manner advantageous to her classes as shown by the reports of the probationary principal, Rowena Keith Keyes, and signed, according to requirements, by appellant (fols. 48 and 49).

While serving as a teacher in the above mentioned public high school, maintained by the taxpayers of New York, appellant was summoned to serve as a juror in the Federal Court in the City of New York. Reporting to the office of the probationary principal, Rowena Keith Keyes, at the above mentioned school and finding the said probationary principal, Rowena Keith Keyes, not in her office, appellant left a note in the mail box of the said probationary principal, Rowena Keith Keyes, at the said Girls' High School in Brooklyn the day before reporting for jury service, in which appellant advised the said probationary principal of her impending absence in order to perform the civil obligation of serving as a juror in the United States District Court for the Southern District of New York.

During appellant's period of service as a juror in the Federal Court, the City of New York withheld the sum of $8.50—the price paid to the substitute teacher taking appellant's classes during appellant's absence for the purpose of serving as a Federal Court juror—from appellant's salary for each day of service rendered by appellant as a juror in the Federal Court. Appellant's remuneration as a Federal Court juror was four dollars ($4.00) per day. Thus, appellant's performance of the civil obligation of

Federal jury service was at a personal financial loss of $4.50 per day (fol. 15).

Not content with having penalized appellant financially because of her service as a juror in the Federal Court, the City of New York, through its agent Rowena Keith Keyes—then probationary principal of Girls' High School, but upon whom the City of New York later put its stamp of approval by granting permanent appointment as a high school principal at an annual salary of $10,000 per year and whom it has since retired on a pension of several thousand dollars per year—later charged appellant with *Neglect of Duty* because of her absence from the classroom to serve as a juror in the Federal Court in registered missive No. 39799, mailed from Station B, United States Post Office, Brooklyn, New York, under date of September 19, 1939, as follows:

"From March 7th to April 4th Dr. Bomar was absent on jury duty 19 days. Since jury duty for women is granted only on their application and since two weeks is the usual limit for such service, I feel that 19 days or four weeks was an excessive amount of time to take from her classes." (Fols. 40-41.)

At a so-called "hearing" by school officials of the City of New York on the above charge, appellant was denied representation by counsel, no *outsiders*—that is, no one not connected with the New York City public school system, being allowed at the so-called "hearing." After the above mentioned so-called "hearing" at which appellant was denied representation by counsel, appellant was dismissed from her position as a teacher in the public school system, effective November 1, 1939. Thus, appellant was deprived of means of livelihood without due process of law (fol. 174).

Appellant later, through the medium of a teachers' organization, of which appellant has never been a member, appealed to the New York State Commissioner of Educa-

tion to review the "star chamber" proceedings which had resulted in appellant's deprivation of means of livelihood because of her performance—at personal financial loss—of the civil obligation of Federal jury service. This the New York State Commissioner of Education refused to do on the ground that as a teacher on probationary status only, appellant had no "rights" to a determination of the issues on the basis of merit. Thereupon, the teachers' organization, of which appellant has never been a member, instituted proceedings in the State Court (in Albany, Judge William Murray, sitting) by which it was sought to compel the New York State Commissioner of Education to review the proceedings by which appellant's dismissal as a teacher in the New York City public school system had been brought about and make a determination of the matter on the basis of merit. But the Court refused to order any review of appellant's dismissal, on the ground that as a teacher of probationary status only, appellant had no "rights."

Appellant, thus denied by New York City and State officials of her right to a review and determination on the basis of merit of the issues involved in her dismissal as an educational employee of the City of New York after the following charge of *Neglect of Duty* had been made:

"From March 7th to April 4th Dr. Bomar was absent on jury duty 19 days. Since jury duty for women is granted only on their application and since two weeks is the usual limit for such service, I feel that 19 days or four weeks was an excessive amount of time to take from her classes"

filed a complaint in the United States District Court for the Southern District of New York against Rowena Keith Keyes who made the charge of *Neglect of Duty* against appellant because of her absence from the classroom to serve—at personal financial loss—as a juror in the Federal Court, and the City of New York who, through its duly

authorized agents, sustained the above quoted charge at a so-called "hearing" at which appellant was denied representation by counsel and at which no "outsider," that is, person not connected with the New York City public education system, could be present (fols. 74-75).

Appellant's complaint, coming on to be heard before the Hon. Murray Hulbert, U. S. D. J., on January 22, 1946, was dismissed by the said Court, and a judgment assessing ten dollars as costs against appellant was entered under date of March 21, 1946 (fols. 124 and 134).

During the hearing at which the appellees Rowena Keith Keyes and the City of New York, through counsel of the office of the Corporation Counsel of the City of New York, asked for the dismissal of the complaint, the Court, over the protests and objections of appellant, received from counsel for the appellees Rowena Keith Keyes and the City of New York papers which were entirely extraneous from the charge upon which the complaint was based and which were, therefore, immaterial, incompetent and irrelevant to the action and were, in truth, vicious fictions concocted by the appellees in their effort to detract attention from the issue involved, that of intimidation and penalization of an American citizen because of the performance by that citizen (appellant), at personal financial loss, of the civil obligation of Federal jury service (fol. 171).

Appellant appealed the decision of the United States District Court for the Southern District of New York dismissing the complaint in which the Court (Hon. Murray Hulbert, U. S. D. J.) held that "so long as the plaintiff was employed as a teacher in the public schools of the City of New York, she could not absent herself from her post of duty without permission or legal excuse" and that "The educational authorities undoubtedly had the right to entertain, pass upon and determine the charge of absence from duty without leave, and the fact that she was during that

period (March 7 to April 4, 1939) actually serving as a trial juror in this court did not excuse her absence and inability to perform her duties as a teacher and there was no violation of her civil rights guaranteed to her by the Constitution of the United States'' (fols. 109-110).

In her appeal to the United States Circuit Court of Appeals for the Second Circuit, appellant asked that the judgment of the United States Circuit Court for the Southern District of New York be reversed and the case remanded for jury trial, contending that neither the City of New York nor any other corporation or individual can flout legal mandates and willfully and maliciously deprive an American citizen of means of livelihood on a charge of *Neglect of Duty* because of the performance of the civil obligation of jury service, without having to answer for such un-Americanism in an unbiased court of competent jurisdiction with a duly impaneled jury of American citizens sitting in judgment on the facts at issue (fols. 179-180).

Appellant also complained in her appeal to the United States District Court of the conduct of the District Court (Hon. Murray Hulbert, U. S. D. J) in receiving from counsel for the appellees papers which had not been served upon the appellant and in considering such papers, which were immaterial, incompetent and irrelevant to the issues involved in the complaint, in rendering an opinion (fols. 171-180).

In the decision handed down on May 16, 1947, the United States Circuit Court of Appeals for the Second Circuit took no notice of appellant's complaint of the conduct of the District Court (Hon. Murray Hulbert, U. S. D. J.) in receiving from counsel for appellees, and considering in the opinion rendered, papers which had not been served upon appellant and which were entirely extraneous from the issues involved in the complaint and which were vicious fictions intended to bias the Court and obscure the real issue

of violation of appellant's civil rights and intimidation and penalization of appellant for the performance by appellant, at personal financial loss, of Federal jury service.

The United States Circuit Court of Appeals for the Second Circuit in its decision did, however, reverse the judgment of the District Court and remanded the cause for trial.

Nowhere in the opinion did the Circuit Court of Appeals reverse the judgment of the District Court with respect to one of the two appellees, Rowena Keith Keyes and the City of New York, and not the other; and nowhere in the opinion did the Circuit Court of Appeals remand the cause for trial with respect to one of the two appellees, Rowena Keith Keyes and the City of New York, and not the other. In the closing sentence of the opinion of the Circuit Court of Appeals, rendered under date of May 16, 1947, the statement is short and concise, as follows:

"Judgment reversed; cause remanded for trial."

Appellant contends that by such summation by the Circuit Court of Appeals, both defendants named in the complaint, that is, Rowena Keith Keyes, agent, and the City of New York, principal, were intended by the Circuit Court of Appeals to be continued as defendants and that no change in title of the original complaint was intended by the Circuit Court of Appeals when it closed its opinion with the declaration:

"Judgment reversed; cause remanded for trial."

However, the Circuit Court of Appeals, in its opinion (R. 75) said: "The City of New York at least is not [liable] for it had no part in the supposed wrong; and the complaint was properly dismissed as to it."

Counsel for the appellees contends that by that statement the City of New York has been removed as a defendant.

Appellant claims that such an interpretation is erroneous; and contends that, regardless of any intermediary agencies that may be created by the City of New York to handle its educational affairs, it is, in the last analysis, the City of New York, itself, which is the principal in an action of this kind where an employee of the public education system, supported by public funds derived by taxation, has been removed from the public payroll on a charge of *Neglect of Duty,* as follows:

"From March 7th to April 4th Dr. Bomar was absent on jury duty 19 days. Since jury duty for women is granted only on their application and since two weeks is the usual limit for such service, I feel that 19 days or four weeks was an excessive amount of time to take from her classes."

Appellant has secured a stay of any order, judgment or decree by the United States District Court for the Southern District of New York until such time as the Supreme Court of the United States has determined the status of the City of New York as a defendant in this action.

A certified copy of the record in this case in the United States Circuit Court of Appeals for the Second Circuit, and ten printed copies of the Transcript of Record on Appeal from the District Court of the United States for the Southern District of New York have been deposited with the Clerk of the United States Supreme Court. Wherefore your petitioner respectfully prays that this case may be reviewed and the status of the City of New York as a defendant be determined by this Honorable Court as provided by the Statutes of the United States.

Petitioner feeling that, because of the hostility shown toward her by the United States District Court for the Southern District of New York, she will be unable to secure a fair and impartial hearing in such Court, respectfully requests this Honorable Court to grant a change of venue

in this case—perhaps to the nation's capital—so that petitioner may be assured of fair and impartial treatment in the conduct of the hearing; and for such other and further relief as to this Court may seem just and proper.

WILLIE MELMOTH BOMAR,
Petitioner, pro se.

Sworn to and subscribed before me, this the 11th day of October, 1947.

W. D. HURST, *C. N. P.*,
Wheeler Co., Ga.

[SEAL.]

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CHARLES ELMORE CROPLEY

Supreme Court of the United States

No. 401—October Term, 1947

WILLIE MELMOTH BOMAR,

Petitioner,

against

ROWENA KEITH KEYES, and THE CITY OF NEW YORK,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

November 3, 1947.

CHARLES E. MURPHY,
Corporation Counsel of the City of New York,
Attorney for Respondents,
Municipal Building,
New York 7, N. Y.

W. BERNARD RICHLAND,
SEYMOUR B. QUEL,
ARTHUR H. KAHN,
of Counsel.

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REPORTED BELOW

162 Fed. 2d 136

Supreme Court of the United States

No. 401—October Term, 1947

WILLIE MELMOTH BOMAR,
Petitioner,

against

ROWENA KEITH KEYES, and THE CITY OF NEW YORK,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Statement of Facts

The petitioner was a probationary teacher of home economics in the Girls High School, Brooklyn, New York, a high school under the management and control of the Board of Education of the City of New York. During her probationary period her services were rated "unsatisfactory" and, after a hearing before the Board of Superintendents of the Board of Education, it was recommended that her services be discontinued. On October 31, 1939 the Board of Education accordingly dismissed her from the teaching service.

Petitioner appealed to the Commissioner of Education of the State of New York from the Board's action

in dismissing her. The Commissioner dismissed her appeal (R. 21) on the ground that the dismissal of a teacher during her probationary period is not subject to review. *Matter of Bomar,* 62 N. Y. State Dept. Reports 126 (1940). The Commissioner's decision was based upon New York Education Law, §872, subdivision 1, which provides for a probationary period for teachers not to exceed three years. The above statute then provides:

> "The service of a person appointed to any of such positions [probationary teacher] may be discontinued at any time during such probationary period, on the recommendation of the superintendent of schools, by a majority vote of the Board of Education."

Thereafter, the petitioner instituted a proceeding in the Supreme Court of the State of New York, Albany County, for the purpose of reviewing the Commissioner's determination (R. 21). The Court, in a comprehensive opinion discussing the law and the facts, dismissed the petitioner's proceeding and held that a probationary teacher had no tenure in office and could be dismissed at any time during the probationary period, with or without reason. *Matter of Bomar* v. *Cole,* 177 N. Y. Misc. Reports 740 (New York Supreme Court, Albany Co., 1941).

The next step in the litigation was the institution of an action by the petitioner on October 31, 1945 in the United States District Court for the Southern District of New York against the City of New York and Rowena Keith Keyes, principal of the high school in which she had been serving as a probationary teacher. In that action, the petitioner alleged that her dismissal was brought about by reason of her absence from school for nineteen days while she was serving on a Federal jury; that her right to serve on a Federal jury was a privilege guaranteed by

the laws of the United States, and that accordingly, her dismissal was a violation of her civil rights.

Without filing an answer the defendants moved for summary judgment and for judgment dismissing the petitioner's complaint pursuant to Rules 12 and 56 of the Federal Rules of Civil Procedure (R. 17). United States District Judge Hulbert in an opinion (R. 32-37) granted the defendants' motion and ordered the complaint dismissed (R. 41-42).

The petitioner then appealed to the United States Circuit Court of Appeals for the Second Circuit and on May 16, 1947 that court reversed the judgment of the District Court and remanded the cause for further proceedings in accordance with its opinion. *Bomar* v. *Keyes,* 162 Fed. (2d) 136 (1947). In the course of its opinion the Circuit Court of Appeals said (p. 139):

> "It is quite another question whether either of the defendants is in fact liable. The City of New York at least is not, for it had no part in the supposed wrong; and the complaint was properly dismissed as to it. The statute provides that 'the educational affairs of each city shall be under the general management and control of a board of education' (§865, New York Education Law, Consol. Laws, c. 16) and the Board is a corporate body which may be sued (§300, New York Education Law) and to which all claims must be presented (§868-b, New York Education Law). On the other hand, for the following reasons we cannot say upon the present scanty record that by no possibility can the plaintiff have a claim against Keyes (*Dioguardi* v. *Durning,* 2 Cir., 130 F. 2d 774)."

Although the Circuit Court of Appeals remanded this case for further proceedings in accordance with its opinion, no order has yet been entered in the District Court because the petitioner has obtained an order staying the

entry of any order, judgment or decree by the United States District Court for the Southern District of New York until such time as this Court has determined the status of the City of New York as a defendant in this action.

The petitioner now applies for a writ of certiorari.

Summary of Argument

The determination of the Circuit Court of Appeals clearly upholds the dismissal of the complaint as to the City of New York. If there is any lack of clarity in that determination it is not appropriate to ask this Court to clarify it. The complaint was properly dismissed as against the City of New York because the City of New York had no part in the supposed wrong.

POINT I

The determination of the Circuit Court of Appeals clearly upholds the dismissal of the complaint as to the City of New York. If there is any lack of clarity in that determination it is not appropriate to ask this Court to clarify it. The complaint was properly dismissed as against the City of New York because the City of New York had no part in the supposed wrong.

The petitioner asserts that the opinion of the Circuit Court of Appeals does not clearly indicate whether or not the complaint has been dismissed as against the City of New York. The petitioner advances this alleged lack of clarity as a reason for seeking a writ of certiorari. This procedure is obviously improper. The proper place for an

interpretation or clarification of the Circuit Court's opinion is in the Circuit Court of Appeals itself.

Moreover, the opinion by the Circuit Court of Appeals needs no clarification. The status of the City of New York as a proper defendant in this action was directly raised in the Court below and definitely disposed of by that Court. The Court said (162 Fed. 2nd 136 at p. 139):

> "It is quite another question whether either of the defendants is in fact liable. The City of New York at least is not, for it had no part in the supposed wrong; and the complaint was properly dismissed as to it."

Thus it definitely disposed of the status of the City of New York as a proper defendant in this action and definitely affirmed the dismissal of the complaint as to it.

Equally without foundation is the attack on the merits of the determination below. The Board of Education is not a department of the New York City government; it is an independent corporate body which may sue and be sued in its corporate name, New York State Education Law, §§300, 865; *Gunnison* v. *Board of Education*, 176 N. Y. 11 (1903); *People ex rel. Wells & Newton Co.* v. *Craig*, 232 N. Y. 125 (1921); *Matter of Divisich* v. *Marshall*, 281 N. Y. 170 (1939). The employees of the Board of Education of the City of New York are not the employees of the City of New York. *Matter of Divisich* v. *Marshall, supra; Matter of Ragsdale* v. *Board of Education*, 282 N. Y. 323 (1940); *Matter of Miceli* v. *Board of Education*, 287 N. Y. 596 (1941). Since the employees of the Board of Education are not employees of the City, there can be no liability upon the part of the City by reason of any act of the defendant Keyes, who was the Principal of the Board of Education's high school in which the plaintiff was employed. If the plaintiff has any grievance by reason of an

alleged unlawful dismissal, the proper defendant in such an action is the Board of Education of the City of New York, the Board that dismissed her.

CONCLUSION

The petition for a writ of certiorari should be denied.

November 3, 1947.

Respectfully submitted,

CHARLES E. MURPHY,
Corporation Counsel of the City of New York,
Attorney for Respondents.

W. BERNARD RICHLAND,
SEYMOUR B. QUEL,
ARTHUR H. KAHN,
of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 401

WILLIE MELMOTH BOMAR,

Petitioner,

vs.

ROWENA KEITH KEYES AND THE CITY OF NEW YORK,

Respondents

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorables, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Willie Melmoth Bomar, respectfully submits her petition for the rehearing of her petition for a writ of certiorari to review the findings of the United States Circuit Court of Appeals for the Second Circuit in the above entitled case to determine the status of the City of New York as a defendant; and to order a change of venue so that the case may go to a jury in an atmosphere free

from the bias and prejudice which have been manifest in the hearings held, so far, in New York.

Statement of Facts

Under date of October 24, 1947, petitioner filed her petition for writ of certiorari to review the findings of the United States Circuit Court of Appeals for the Second Circuit to determine the status of the City of New York as a defendant and to order a change of venue so that the case may go to a jury in an atmosphere free from the bias and prejudice which have been manifest in the hearings held, so far, in New York.

After such filing, petitioner heard nothing further from Court nor defendants until on the morning of Tuesday, November 18th (1947) she received the telegram which is here reproduced saying that her petition had been denied by the Court on November 17th, 1947.

(Here follows 1 Photolithograph of Telegram)

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This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

WESTERN UNION

1204

A. N. WILLIAMS
PRESIDENT

SYMBOLS
DL = Day Letter
NT = Overnight Telegram
LC = Deferred Cable
NLT = Cable Night Letter
Ship Radiogram

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

12 Collect 52-13-65 3EAtr

Washington DC Via Glenwood,Ga.17

Willie Melmouth Bomar.
Leesburg,Ga.

Petition for Certiorari Bomar Against Keys Denied today.

Charles Elmore Cropley Clerk.

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

It was not until *November 24,* 1947, that petitioner received copies of the answer made by defendants, through their counsel of the office of the Corporation Counsel of the City of New York, to her petition. That answer was dated *November 3,* 1947; and the envelope containing it, addressed to petitioner in New York, was postmarked in New York on *November 7,* 1947. A copy of the face of that envelope is here reproduced.

(Here follows 1 Photolithograph of Envelope)

LAW DEPARTMENT
CITY OF NEW YORK
MUNICIPAL BUILDING
NEW YORK 7, N. Y.

THIS IS T... STAMP WHICH YOU ...

NOV 7 - 1947

Willie Melnoth Bomar
General Delivery Leesburg, Ga.

The long delay in the forwarding of that envelope to petitioner from New York to Leesburg, Georgia, has not been explained. Nor has any other mail addressed to petitioner ever been so delayed in transit.

Replication

In replication to the answer interposed by counsel for the defendants and in this petition to the Court for a rehearing, petitioner wishes to point out that the counsel representing the defendants are from the office of the Corporation Counsel of the City of New York. The Board of Education of the City of New York has counsel assigned to it—paid, of course, by the City of New York, as are all of the other City employees. This, of itself, brands the defendants' claim (p. 5 of defendants' answer, lines 16 and 17) that "The Board of Education is not a department of the New York City government" as a factual absurdity and a legal monstrosity, born of a perverted desire to distort all phases of the law of agency. The City of New York, which exercises its powers to levy taxes for the support of its schools, is the financial parent and thus the principal in any action involving any of its educational employees. It is the City of New York which levies taxes and pays the salaries; and makes provision for pensions upon retirement. It is the City of New York, not the Board of Education, which has furnished counsel, from the staff of the Corporation Counsel of the City of New York, for defendant Keyes, a former educational employee and now a city pensioner. It is the City of New York which paid petitioner's salary until she was dismissed from the City as an educational employee after a charge of *Neglect of Duty* had been made against her as follows:

> "From March 7th to April 4th Dr. Bomar was absent on jury duty 19 days. Since jury duty for women is

> granted only on their application and since two weeks is the usual limit for such service, I feel that 19 days or four weeks was an excessive amount of time to take from her classes."

Respondents make the claim that petitioner's services were rated "unsatisfactory." Does the above charge of *Neglect of Duty* imply unsatisfactory service? To the contrary, the connotation is clearly services of a highly satisfactory nature, otherwise why the plaint of an "excessive amount of time" taken from her classes. Any school principal with a modicum of regard for pupils' welfare would be glad for an "unsatisfactory" teacher to remain away from her classes indefinitely.

The utter lack of sincerity and good faith of respondents' claim of "unsatisfactory" service on the part of petitioner is shown by the fact that during the entire school year of 1938-1939 petitioner's teaching load was the most arduous and excessive of that of any teacher in the Girls' High School, the school over which respondent Rowena K. Keyes presided as a probationary principal. To attempt to sustain any charge of "unsatisfactory" service on the part of petitioner automatically convicts respondent Keyes of a willful and malicious disregard for pupils' welfare. For, certainly, any school principal with any regard whatsoever for pupil welfare would not subject an unduly large number of them to "unsatisfactory" teaching.

In the light of such conditions, respondents' claim of "unsatisfactory" in regard to petitioner's services can not be heard. It is entirely in keeping with the hypocrisy, sham and dishonesty of purpose exemplified by the City of New York through its agent Rowena Keyes when she made this startling declaration against petitioner, under a heading "Conduct Unbecoming a Teacher":

> "Dr. Bomar took it upon herself to investigate records at the Board of Education in an effort to prove

> that Mrs. Klee, who had received her permanent license under the Jarema Law, had been given credit for more experience than she was entitled to. *She succeeded in proving her point.* [Italics mine.] Her action could bring no advantage to Dr. Bomar herself and would seem, therefore, to have been prompted by sheer ill will."

Certainly the disclosure of irregularities in the disbursement of public funds and the violations of rules in a so-called "merit" system of public education should be received with gratitude where there is any honesty of purpose or any degree of professional integrity in the conduct of such public affairs. But when respondents, City of New York as the financial principal, and Rowena Keyes as its agent, charged petitioner with being prompted by "sheer ill will" because she was successful in showing up the sham, hypocrisy and dishonesty existing in New York City's public education system, they—the respondents, sank far down into the mire of professional racketeering and drank deep at the fount of "smearing" as inspired and practiced by those who follow the totalitarian idea in government which is diametrically opposed to the democratic ideal which is *supposed still to exist in America.* Small wonder that popular magazines are publicizing the authoritative report that pupils in New York's schools "are not prepared to be useful citizens"! (*Readers' Digest*, December, 1947, p. 16.) How can pupils be prepared for useful citizenship in an atmosphere of fraud, hypocrisy and deceit characterized by the penalization of a teacher because of her performance of the duties of citizenship?

Petitioner here presents a copy of one of her author's cards as found in the New York City library and other large city and university libraries throughout the land. It shows her interest in women as participants in community life.

Because of that study as a background, petitioner has a particular interest in the attitude of the Courts in her fight for the right to perform obligations of citizenship without penalization.

(Here follows 1 Photolithograph of Author's Card)

Education, Adult—U.S.

397

Bomar, Willie Melmoth, 1894–

The education of homemakers for community activities; a study of the community interests and activities of representative homemakers to discover certain needs for home economics education, by Willie Melmoth Bomar ... New York city, Teachers college, Columbia university, 1931.

viii, 135 p. 23½cm. (Teachers college, Columbia university. Contributions to education, no. 477)

Published also as thesis (PH. D.) Columbia university.

1. Women in public life. 2. Woman—Societies and clubs. 3. Cities and towns—Civic improvement. 4. Education of women. 5. Domestic economy—Study and teaching. I. Title.

Library of Congress — Copy 2.
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HT109.B6 1931 a
LB5.C8 no. 477
[5-6]

31-29619

[396] 309.1

The Attorney General of the State of New York has declared (*Civil Service Leader,* Tuesday, August 26, 1947): "It would be indeed a niggardly public policy for the State to open the door to jury service as a public duty for women and then to make such service a penalty to those who sought to perform their duty. Not only should there be no question of loss of salary when absence is caused by jury service duties, but State employees should in no way be deterred from rendering such service. No deduction should be made."

Petitioner not only suffered loss of salary because of her performance, while an employee of the City of New York, of Federal jury service, but she was further penalized by dismissal from her position as an educational employee of the City of New York after the following charge of *Neglect of Duty* was made against her by Rowena Keyes, agent for the financial principal, City of New York:

> "From March 7th to April 4th Dr. Bomar was absent on jury duty 19 days. Since jury duty for women is granted only on their application and since two weeks is the usual limit for such service, I feel that 19 days or four weeks was an excessive amount of time to take from her classes."

Respondents, through their counsel of the office of the Corporation Counsel of the City of New York, claim that because petitioner's status was only that of a probationary teacher, she can not be heard. But petitioner contends that a probationary teacher in the public education system of the City of New York can retain her status as an American citizen. And when her rights as an American citizen are trampled under foot and she is penalized by the City from which she has drawn her support while engaged as an educational employee to the extent of deprivation of means of livelihood for having exercised the privileges of Ameri-

can citizenship, then, surely that teacher, as an American citizen, can look to the Federal courts for redress in damages for the injuries she has suffered, else the so-called American democracy becomes merely a sham and pretense and a hollow mockery of the form of government for which rivers of American blood has been shed.

Petitioner respectfully requests the Court to declare immaterial, incompetent and irrelevant to this action any decisions heretofore arrived at by New York State officials and courts, because in no instance were such officials competent to pass upon the issues at stake in this action, *i. e.*, redress in the form of damages because of the violation of her civil rights by the financial principal, City of New York and its agent, Rowena Keyes.

This action rests solely on this charge of *Neglect of Duty:*

> "From March 7th to April 4th Dr. Bomar was absent on jury duty 19 days. Since jury duty for women is granted only on their application and since two weeks is the usual limit for such service, I feel that 19 days or four weeks was an excessive amount of time to take from her classes,"

after which petitioner was dismissed from her position as an employee of the City of New York. Only the Federal Courts are competent to act in such a case where redress is sought in the form of damages from the respondents who willfully and maliciously violated petitioner's rights of American citizenship.

Pursuant to § 394 a-1.0 of Title A, Chapter 16, of the New York City Charter and Administrative Code, petitioner presented her claim for damages to the Comptroller of the City of New York more than thirty days previous to the filing of her complaint in the Federal Court.

In order that time, money and effort may be saved, petitioner, as an American citizen seeking her day in court,

respectfully requests this Court to reconsider its denial of her petition for writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit so that clarification of the status of the City of New York as a defendant may be made; and a change of venue granted so that this action may proceed in an atmosphere free from the bias and prejudice which have characterized the procedures in the New York courts.

Respectfully submitted,

WILLIE MELMOTH BOMAR,
Petitioner, pro se.

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